NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NO. 29650

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

CRAIG SMALLWOOD, Plaintiff-Appellant,

v.

HASEKO (EWA) INC., and CITY AND COUNTY OF HONOLULU,

Defendants-Appellees

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT

(CIVIL NO. 04-1-2315)

ORDER DISMISSING APPEAL

FOR LACK OF APPELLATE JURISDICTION

(By: Foley, Presiding Judge, Fujise and Leonard, JJ.)

(APPENDIX C)

Upon review of the record, it appears that we lack jurisdiction over this appeal that Plaintiff-Appellant Craig Smallwood (Appellant Smallwood) has asserted from the Honorable Sabrina S. McKenna's January 22, 2009 order that, among other things, dismissed Civil No. 04-1-2315-12 (SSM) in its entirety (the January 22,2009 dismissal order), because the circuit court has not reduced the January 22, 2009 dismissal order to a separate judgment pursuant to Rule 58 of the Hawai'i Rules of Civil Procedure (HRCP).

Hawaii Revised Statutes (HRS) 641-1 (a) authorizes appeals to the intermediate court of appeals from final judgments, orders, or decrees. Appeals under HRS 641-1 "shall be taken in the manner...provided by the rules of the court." HRS 641-1(c). The supreme court has promulgated HRCP

Rule 58, which specifically requires that "[e]very judgment shall be set forth on a separate document." The supreme court has held that " [a]n appeal may be taken...only after the orders have been reduced to a judgment and the judgment has been entered in favor

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

of and against the appropriate parties pursuant to HRCP [Rule] 58 [.]" Jenkins v Cades Schutte Fleming & Wright, 76 Hawai'i at 119, 869 p. 2d at 1338. The separate judgment must "either resolve all claims against all parties or contain the finding necessary for certification under HRCP [Rule] 54(b)." Id. "An appeal from an order that is not reduced to a judgment in favor or against the party by the time the record is filed in the supreme court will be

dismissed." Id. at 120. 869 P. 2d at 1339 (footnote omitted). Consequently, "an order disposing of a circuit court case is appealable when the order is reduced to a separate judgment." Alford v City and County of Honolulu, 109 Hawai'i 17, 20, 122 P. 3d 809, 815 (2005) (Citation omitted). For example, the supreme court has explained that, "[a] lthough RCCH [Rule] 12(q) [(regarding dismissal for want of prosecution)] does not mention the necessity of filing a separate document, HRCP [Rule] 58, as amended in 1990, expressly requires that 'every judgment be set forth on a separate document.'" Price v Obayashi Hawaii Corporation, 81 Hawai'i 171, 176, 914 P. 2d 1364, 1369 (1996).

In appellate court case number 27285, the intermediate court of appeals vacated the February 23, 2005 judgment in Civil No. 04-1-2315-12 (SSM),

and, thus, the February 23, 2005 judgment is now void. See Smallwood v. City and County of Honolulu, 118 Hawai'i 139, 185 P. 3d 887 (App. 2008). The circuit court has not reduced the January 22, 2009 dismissal order to a separate judgment in Civil No. 04-1-2315-12 (SSM). On April 21, 2009, the appellate court clerk filed the record on appeal for appellate court case number 29650, and at that time the record on appeal

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

did not contain a separate judgment that, on its face, resolves all claims against all parties in Civil No. 04-1-2315-12 (SSM).

Therefore, Appellant Smallwood's appeal is premature, and we lack appellate jurisdiction.

Accordingly, IT IS HEREBY ORDERED that this appeal in appellate court case number 29650 is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, June 18, 2009.

"s/"
Presiding Judge

"s/"
Associate Judge

"s/"
Associate Judge